IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2374 of 2005

BANSHI LAL
V/S
SAMAST PANCH GAUR CHITRAKARAN

Mr. RAJESH JOSHI, for the appellant / petitioner

Date of Order : 8.2.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

It is reported that Dhan Raj has expired way back in 2001. Learned counsel submits that today he has filed an application under Article 226 read with O. 1 Rule 10 C.P.C. Learned counsel made available for my perusal copy of the application. It is pleaded in the application that Dhan Raj has expired on 26.9.2001, and the application filed on behalf of the respondents through Shri Kanhaiyalal was allowed but inadvertently while drafting the writ petition respondent Samaj was represented through President Dhanraj, as such amendment in the arena of the respondent may kindly be permitted and in place of Dhanraj, Kanhaiyalal be substituted.

I have perused the application. In my view, it cannot be said that there was any inadvertence inasmuch as the impugned order Annexure-5 is the order whereby recording the fact of death of Dhan Raj, on the application of Kanhaiyalal he was impleaded as party as a successor president. This is the precise order under challenge before this Court. In such circumstances, if the writ petition was

drafted to challenge this order, there was no occasion for impleading Dhan Raj as the person representing Samaj.

In that view of the matter, the theory propounded in the application about inadvertence is exfacie untenable. Secondly as by impugned order Kanhaiyalal has been ordered to be impleaded/substituted in place of Dhan Raj, in the writ petition Kanhaiyalal was necessary party, in whose absence the writ petition cannot be said to be properly constituted.

It was pointed out that against the impugned order earlier revision petition was filed, being S.B. Civil Revision Petition No. 1296/2002. A look at the order Annexure 1 and 2 does show, that in that revision petition also Kanhaiyalal was not impleaded, and Dhan Raj alone was impleaded.

Thus to say the least, the writ petition is not properly constituted as well, and there is no occasion now to substitute Kanhaiyalal. The writ petition is, therefore, dismissed.

(N P GUPTA),J.

/Sushil/